Litigation
Japan

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gar know-how

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Overview

1 Court system

Describe the general organisation of the court system for civil litigation.

Japan has a unified court system under the sole Supreme Court as the court of last instance, independent from other branches of power. The Constitution requires no special court independent from the Supreme Court. There are eight High Courts in large cities, as well as six High Court branches, all of which exist as primary courts of second instance. There are 50 district courts in the capital cities of each prefecture, as well as 203 district court branches at other smaller cities and towns, which exist as primary courts of first instance. Civil claims of which the value is no more than Y1,400,000 are tried at summary courts in the first instance. Judges are generally appointed from among legal apprentices without experience as practising lawyers. Professional judges try cases, and no juries are available. There is no stare decisis rule in Japan; nevertheless, court precedents have significant referential value for judges to decide similar cases.

2 The legal profession

Describe the general organisation of the legal profession.

Only lawyers admitted to the Bar of Japan (bengoshi) are allowed to practice law. Generally, to be a lawyer it is necessary to go through one year of legal training as a legal apprentice after passing the bar examination. Engaging in business to provide legal advice on Japanese law for the purpose of obtaining compensation without a license is criminal and subject to monetary penalties or imprisonment. There is no distinction between barristers and solicitors. Foreign lawyers who register as Registered Foreign Lawyers (Gaikoku-hô jimu bengoshi) are allowed to provide legal services concerning the law of the state of primary qualification. Registered Foreign Lawyers are not eligible to appear before Japanese courts; however, Registered Foreign Lawyers may represent parties in international arbitration. Further, foreign lawyers may represent parties in international arbitration if they are requested to undertake or undertook the matter in a foreign state, and if they are not employed and are not providing services in Japan, based on his or her knowledge concerning foreign laws.

3 General

Give a brief overview of the political and social background as it relates to civil litigation.

Japan has a civil law system, and the Japanese civil procedural system is originally based on German civil procedural law, which is an inquisitorial model; however, it is also equipped with important characteristics of an adversarial system originating from the US legal system, such as the method of witness examination. The Japanese code of civil procedure was totally revised in 1996, and a new code, called the Code of Civil Procedure, Law No. 109 of 1996 (the CCP), was enacted. The government initiated judicial reform discussions in 1999–2001, and various new laws related to the judicial system have been enacted to provide better legal services in Japan thereafter.

Japanese people are considered to be litigation averse. As the Japanese civil procedure system is not as pro-plaintiff as, for example, the United States, where pretrial discovery or punitive damages are available, other than some activist shareholders or consumer activity related organisations, the concept of the professional litigant is not common.

Jurisdiction

4 Jurisdiction and venue

What are the criteria for determining the jurisdiction and venue of the competent court for a civil matter?

District courts have general jurisdiction as a first instance court for civil claims of which the value is over Y1,400,000. Civil claims of no more than Y1,400,000 are tried at summary courts as a first instance court.

Regarding the issue of venue, that is, allocating the competent court within the country, it is a general rule that the plaintiff must file a lawsuit at the defendant's forum, but there are exceptions to this rule promulgated in the CCP, and generally the plaintiffs can elect to choose the forum among themselves. The parties may agree on the applicable venue in writing if the agreement is concerned with a specific legal relationship.

Regarding the issue of international jurisdiction, ie, allocating the competent court between Japan and other countries, the rule is that the plaintiff must file a lawsuit in the defendant's forum. Exceptions to this rule are again promulgated in the CCP, but as the defendants' burden to appear in the plaintiffs' forum is much harder than for domestic cases, the exceptions are generally more limited than those recognised regarding the issue of venue. The parties may agree on the applicable jurisdiction of any particular country in writing if the agreement is concerned

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with a specific legal relationship, and if it is not remarkably unreasonable and does not violate law related to the public order of Japan. For jurisdiction agreements between corporations and consumers, and civil disputes relating to labour matters, the forum that the parties may agree on are limited to protect the interests of consumers or workers. Even if any of the grounds provided by the CCP exist in Japan, courts may deny Japanese jurisdiction, if exceptional circumstances exist, in which trying the case in Japan may harm the fairness of the parties, or prevent the achievement of a fair and speedy trial, considering the nature of the case, the degree of the burden placed on the defendant to respond to the litigation, location of the evidence, and other circumstances. This exception is arguably similar to the US principle of forum non conveniens.

5 Forum shopping

Does your jurisdiction commonly attract disputes that have a nexus with other jurisdictions?

No, Japanese courts determine jurisdiction over the case depending on the prescribed rules in the CCP, and are not inclined to expand jurisdiction only because the dispute has some nexus with Japan. Further, because Japanese courts are prudent in handing down decisions awarding significant amounts in damages and issue extensive document production orders, they are less attractive to potential claimants.

6 Pendency in another forum

How will a court treat a request to hear a dispute that is already pending before another forum?

If a dispute is pending before another forum in Japan, the court dismisses the case. On the other hand, if a dispute is pending before another forum in a foreign country, it has been established that Japanese courts will not decline to hear the case just because the same matter is pending before another forum. However, the prevailing view is that a Japanese court may decline to hear the case at its discretion in that situation, balancing various interests, including fairness between the parties and circumstances where a fair and speedy trial may be impeded.

7 Deference to arbitration

How will the courts treat a dispute that is, or could be, subject to an arbitration clause or an agreement to arbitrate?

The Arbitration Law, Law No. 147 of 2004, materially follows the UNCITRAL Model Law. Therefore, Japanese courts will decline to hear the case if the matter is subject to an arbitration agreement, unless the arbitration agreement is invalid, arbitration proceedings are inoperative or incapable of being performed based on the arbitration agreement, or the defendant has made statements on the merits of the dispute before the court.

8 Judicial review of arbitral awards on jurisdiction

May courts in your country review arbitral awards on jurisdiction?

Yes, if the arbitral tribunal renders an award where it does not have jurisdiction, courts may set aside the arbitral award. For example, if the arbitral award contains decisions on matters beyond the scope of the arbitration agreement, or the claims in the arbitral proceedings relate to a dispute that cannot constitute the subject of an arbitration agreement under the laws of Japan, the Japanese court may set-aside the arbitration award.

9 Anti-suit injunctions

Are anti-suit injunctions available?

No, although the general rule for injunctions should be applicable, there is a common understanding that Japanese procedural law practice does not recognise the concept of anti-suit injunctions and no precedent for such an injunction is known.

10 Sovereign immunity

Which entities are immune from being sued in your jurisdiction? In what circumstances?

A law, entitled the Law regarding Civil Judicial Power of our Nation against the Foreign State and Others, Law No. 24 of 2009, was enacted. This law follows the 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property, which was signed and ratified by Japan. The law provides that foreign states enjoy sovereign immunity, but it adopts a so-called restrictive theory of sovereign immunity.

Therefore, a foreign state is subject to a Japanese court's jurisdiction, if the matter is related to commercial acts (de jure gestionis), as opposed to government acts (de jure imperii). Whether an act is of a commercial nature is determined by referring to the nature of the act, not the purpose of the act. Further, if a foreign state gives consent to a specific matter, the state is also subject to the jurisdiction of Japanese courts. A separate consent is required for civil execution of a judgment or an award. Consent to civil proceedings, or an arbitration agreement, is distinguished from consent for civil execution by the foreign state.

Procedure

11 Commencement and conduct of proceedings in general

How are proceedings commenced? To what extent will a court actively lead the proceedings and to what extent will the court rely on the parties to further the proceedings?

Proceedings are commenced by the plaintiff filing a complaint. The complaint must be accompanied by a power of attorney (if the plaintiff is represented by counsel), a corporate certificate to prove the valid representative (if the body or either party is a corporation), a filing fee calculated in accordance with the disputed amount (for example, where the claimed amount is Y100 million, the court filing fees are Y320,000), and postal stamps to be used for communications by the court to the parties. The plaintiff must specify the identity of the defendant, and a so-called John Doe lawsuit is not allowed. The court clerk makes service of process of the complaint and summonses on the defendant.

While judges hear the views of the parties with regard to the proceedings, they are generally proactive in instructing either party concerning further preparation for the case, in urging the parties to produce important documentary evidence, and in encouraging settlement discussions.

12 Statement of claim

What are the requirements for filing a claim? What is the pleading standard?

The party who owes the burden of proof must specify the elements of the allegations. Therefore, the plaintiff is supposed to specify the elements of its claim, while the defendant is supposed to specify the elements of its defence. In that sense, Japanese courts request detailed substantiation, rather than mere notice pleading. The plaintiff must specify what relief he is seeking. Where the plaintiff is requesting the payment of money from the defendant, the amount of that request must be specified in the complaint.

13 Statement of defence

What are the requirements for answering claims? What is the pleading standard?

See 12. The same standard is applicable to the defendant's defence. The defendant owes the burden of proof in defence.

14 Further briefs and submissions

What are the rules regarding further briefs and submissions?

Parties are allowed generally to submit briefs at least two or three times each, and up to around ten times for large cases, before the examination of witnesses at the first instance.

Amicus briefs are not generally permitted. However, in January 2014, in Apple v. Samsung, over the patent on the FRAND declaration, the IP High Court invited opinions from the public on specific issues, considering the impact of its decision on the industry. However, that case is regarded as very exceptional.

15 Publicity

To what degree are civil proceedings made public?

Oral hearings in a courtroom are generally open to the public, but comprehensive oral presentations of the case are not adopted. TV cameras or photographers are not allowed in court during the proceedings. Substantial discussions among the judges and parties tend to be conducted in the preparatory proceedings in a meeting room, closed to the general public.

Civil court filings are publicly available for inspection; for those who show a prima facie interest in the case, copies of the court filings can be provided at their own cost. Parties who establish that any part of the court filings contain important personal information or a trade secret may request that the court issue an order prohibiting any third party from inspecting or reproducing the court filings.

In judgments parties are not anonymised, but for publication in private case reports, on official court websites or in legal databases, they are anonymised in many cases.

Pretrial settlement and ADR

16 Advice and settlement proposals

Will a court render (interim) assessments about any factual or legal issues in dispute? What role and approach do courts typically take regarding settlement? Are there mandatory settlement conferences between the parties at the outset of or during the litigation?

To further settlement discussions, judges give interim assessments about factual and legal issues from time to time. In Japan, judges act as mediators, and conduct caucus sessions (discussions with one of the parties in the absence of the other party); if the settlement discussions break down, the same judge hands down a judgment. The judge does not formally use information disclosed in the caucus session, but there is a concern that psychologically it may impact the final decision. Settlement discussions are not mandatory, but it is common for judges to attempt a settlement immediately before and after the oral examination of witnesses.

17 Mediation

Is referral to mediation or another form of ADR an option, or even mandatory, before or during the litigation?

The judge can refer the case to mediation before a judge of another division of the same court, but the system is not used frequently. Rather, the judge himself attempts to achieve a settlement, as explained in question 16. Mediation or ADR is not a mandatory option, except for certain types of disputes, such as increases or decreases in rent.

Interim relief

18 Forms of interim relief

What are the forms of emergency or interim relief?

(i) For monetary claims, potential plaintiffs may apply for an 'order of provisional attachment' to freeze the potential defendant's assets to secure collection of their claims. (ii) For certain categories of non-monetary claims, potential plaintiffs may apply for an order for appropriate measures to preserve their rights with respect to the subject matter in dispute ('provisional disposition with respect to the subject matter in dispute'). (iii) Another type of interim remedy, an 'interim remedy of a provisional disposition to determine the provisional legal relationship between the parties' is available to avoid substantial detriment or imminent danger caused by disputed legal relationships.

19 Obtaining relief

What must a petitioner show to obtain interim relief?

(i) For an 'order of provisional attachment' and (ii) a 'provisional disposition with respect to the subject matter in dispute,' explained in 18, the petitioner must establish a prima facie case of: (a) the existence of the petitioner's substantive rights; and (b) the impossibility or difficulty of successfully enforcing the rights in the future without the provisional attachment or disposition. Judges generally use ex parte proceeding to issue orders of these categories, to avoid the potential defendant's attempts to frustrate enforcement. The respondent may commence objection proceedings upon receiving an order for such interim remedies. For (iii) an 'interim remedy of a provisional disposition to determine the provisional legal relationship between the parties,' a petitioner must establish a prima facie case that: (a) there exists a certain legal relationship that the opposing party is disputing; and (b) there is a necessity to avoid substantial detriment or imminent danger to the petitioner. Because an interim remedy of this category has a serious impact on the respondent, the court generally conducts the hearing with both parties before issuing an order for this interim remedy.

Decisions

20 Types of decisions

What types of decisions (other than interim relief) may a court render in civil matters?

A partial judgment is available, when a party brings multiple claims, and one of them is ripe for decision. A partial judgment is a final judgment and appealable independently. Another type of judgment is an interlocutory judgment. It is available when an independent defence or any other interlocutory dispute is ripe for decision. An interlocutory judgment is also available with regard to liability issues, when liability and quantum issues are disputed, and the court considers that the liability issue should be firstly determined, separately from the quantum issue. An interlocutory judgment is not a final judgment, and therefore not appealable independently. Partial and interlocutory judgments are not frequently used.

21 Timing of decisions

At what stage of the proceedings may a court render a decision? Are motions to dismiss and summary judgment available?

The court may render a decision when the court considers that the matter is ripe for judgment. The defendant may request that the proceedings be dismissed for lack of a procedural requirement, such as a lack of valid service of process of the complaint, lack of jurisdiction, lack of competency as a litigant, lack of standing, or lack of interest to sue. No summary judgment is available.

22 Default judgment

Under which circumstances will a default judgment be rendered?

The CCP does not allow a judge to render a judgment merely because a party is absent from the hearing. If the defendant does not appear without filing an answer in advance at the first hearing, regardless of the fact that the complaint has been duly served on the defendant, the

defendant is deemed to admit the facts in the complaint, and the judge renders a judgment based on the admitted facts. When the complaint was served on the defendant by publication, the facts in the complaint are not deemed to be true. Therefore, the judge must conduct an examination of evidence even if the defendant is absent from the hearing.

23 Duration of proceedings

How long does it typically take a court of first instance to render a decision?

It depends on the scale and complexity of the case, but under the Act on the Expediting of Trials, Law No. 107 of 2003, judges generally attempt to conclude the first instance proceedings within two years.

Parties

24 Third parties – joinder, third-party notice, intervenors

How can third parties become involved in proceedings?

The parties may file a claim against a third party during the pendency of the litigation, but a consolidation is determined at the courts' discretion. If a third party insists that his or her interest will be harmed by the outcome of the pending lawsuit, or the matter subject to the dispute between the current plaintiff and defendant belongs to him, then that party may make independent joinder claims against the plaintiff and defendant, by instituting his own claims. If a third party's legal position is affected as a result of a pending lawsuit, either in its conclusion or reasoning, the party may request to intervene in the case in order to assist one of the parties. On the other hand, the parties to the litigation can also issue a notice to such a third party, and if such a notice is issued, and even without actual intervention by the third party, the effect of the judgment may bind the third party, not only for its conclusion, but also for its reasoning. If a party's position is legally affected as a result of a pending lawsuit, the third party can intervene as a co-litigant.

Evidence

25 Taking and adducing evidence

Will a court take or initiate the taking of evidence or will it rely on the parties to request the taking of evidence and to present it?

It is generally prohibited for a court to rely on evidence that the parties have not submitted to the court. For documentary evidence, the court examines almost all evidence that the parties have submitted. For the examination of witnesses, the court carefully examines whether the witnesses the parties request for examination are necessary, and examines them only when the court considers that their testimony will influence the result of the case.

26 Disclosure

Is an opponent obliged to produce evidence that is harmful to it in the proceedings? Is there a document disclosure procedure in place? What are the consequences if evidence is not produced by a party?

A party is not obliged to produce evidence harmful to himself to the court and the opposing party. In that sense, the duty of zealous representation prevails over the duty of candour or honesty to the court. A party may request that the court order the other party or a third party to produce specific documents, if certain requirements provided in the CCP are met. There is no general pretrial, or US type extensive pretrial discovery procedures. No fishing expeditions are permitted.

If evidence is not produced by the party who owes the burden of proof, the disputed fact will be treated as non-existent and unfavourable to that party.

If a court orders a party to produce documents and the party does not, the court may deem the allegation pertaining to the related evidence made by the other party to be true. The third party may be subject to a non-penal fine penalty for not complying the order.

27 Witnesses of fact

Please describe the key characteristics of witness evidence in your jurisdiction.

Witnesses owe a duty to testify under law. False statements are subject to perjury. The duty to testify is exempted only in limited circumstances, such as where testimony would incriminate himself or his family, or involve official secrets of public officials, or secrets obtained through performance of duties of professionals such as a doctor and a lawyer (including a Registered Foreign Lawyer), or technical or professional secrets. There is no US type pretrial deposition. Before the examination of witnesses, it is common practice to exchange written witness statements among the judges and the parties to shorten direct examination and to prepare for cross-examination. As explained in question 3, the examination of witnesses follows a US-style adversarial system, in which the parties conduct direct and cross-examination, followed by supplemental questions by judges.

28 Expert witnesses

Who appoints expert witnesses? What is the role of experts?

Under the CCP, courts are supposed to appoint experts, and if it does, firstly, the expert is supposed to submit an opinion verbally or in writing. If questioning is required, the judge asks the expert questions first, and then the parties are allowed to supplement the questions. The role of experts is to supplement the specialised knowledge and experience of the judges in special fields so that the judges can reach appropriate conclusions.

It is also common, as in the US practice, that parties retain their own experts and request that the court examine them. If that happens, they are not an "expert" as prescribed by the CCP, and the process for fact witnesses, explained in 27, will be used.

29 Party witnesses

Can parties to proceedings (or a party's directors and officers in the case of a legal person) act as witnesses? Can the court draw negative inferences from a party's failure to testify or act as a witness?

The CCP provides that the parties should be examined after the examination of third party witnesses, but the judges may firstly examine the parties, if it is appropriate. Further, the court may take the evidence ex officio. The failure of a party to testify without a justifiable reason may lead to the result that the court can deem the alleged facts by the other party to be true.

30 Foreign law and documentation

How is foreign law or foreign-language documentation introduced into the proceedings and considered by the courts?

A judge is supposed to know the law, as the legal maxim, iura novit curia, says. However, in practice, the parties submit expert opinions authored by experts to prove it. Foreign language documents are not accepted by courts. For documentary evidence written in a foreign language, the party must prepare English translations of the part the party requests the court to examine as evidence.

31 Standard of proof

What standard of proof applies in civil litigation? Are there different standards for different issues?

"A high probability" is the required standard of proof. It is formulated in a Supreme Court decision that "[i]t is necessary and sufficient that the judge has been persuaded of the truthfulness to the degree that an

average person would not have doubt." With respect to certain specific matters, judges may uphold facts even though they have not acquired the same degree of persuasion. The proof required to establish facts in these cases is called prima facie proof. The typical example is to establish the requirement for interim relief.

Appeals

32 Options for appeal

What are the possibilities to appeal a judicial decision? How many levels of appeal are there?

A party is allowed to appeal to the first appeal court, and then to appeal to the second appeal court. The courts to hear these appeals differ, depending on whether the first instance court was the district court or a summary court. If the second appeal is made to a high court, the party may further make a special constitutional appeal to the Supreme Court, if there is an error in interpreting the Constitution or other constitutional errors.

33 Standard of review

What aspects of a lower court's decisions will an appeals court review and by what standards?

The first appellate court reviews the facts and law as a continuation of the first instance court proceedings, and therefore, no deference is given to the lower court decisions. The second appellate court tries only errors of interpretation of law. If the second appellate court is the Supreme Court, ie, the first instance court was a district court, not a summary court, the appellant can appeal to the Supreme Court as of right, if the original judgment contains grave procedural errors provided in the CCP. Further, the appellant can make a discretionary appeal, which was modelled after the US system of certiorari, if the original judgment contains errors of interpretation of law on important legal issues, or there are discrepancies from the precedents of the Supreme Court (or high court judgments where Supreme Court precedent is not available).

34 Duration of appellate proceedings

How long does it usually take to obtain an appellate decision?

In the majority of first appellate proceedings cases, a case is concluded at the first hearing, and no examination of witnesses will be conducted. Therefore, the period from the appeal to judgment is not very long, and in most cases, within a year. For second appellate proceedings, especially those to the Supreme Court, it is impossible to anticipate the duration of the case. It can be swiftly dismissed within just several months after the appellant files the appellate brief, while other cases are prolonged for years before the final disposition.

Special proceedings

35 Class actions

Are class actions available?

US-style class actions are not available in Japan. However, a "qualified consumer organisation" (a consumer organisation certified by the Prime Minister) may bring an action, under the Consumer Contract Act, Law No. 61 of 2000, demanding injunctive relief against business operators who are either soliciting or are likely to solicit consumers to contract in an improper manner or to contract with improper terms, as provided in the law. Further, a new law, entitled the Act for Special Measures with respect to Civil Proceedings to Collectively Restore Damages to Assets of Consumers, Law No. 96 of 2013 (the Collective Claims Act), which will be implemented in October 2016, provides quasi-class actions for certain categories of claims on behalf of consumers. Upon the implementation of the Collective Claims Act, a qualified consumer organisation with additional certification from the Prime Minister (a "specified qualified consumer organisation") may bring a damages claim in relation to consumer contracts against business operators for recovery of losses incurred by consumers, with respect to specific claims, including a claim for damages due to breach of contract, warranty against defects or arising out of tort. However, damage to property other than the subject matter of the consumer contract, lost profits, personal injury, and pain and suffering are excluded from the scope of the claim that can be brought under the Collective Claims Act. The proceedings under the Collective Claims Act are classified as "opt-in"-type proceedings, as opposed to the "opt-out"-type proceedings of US class actions.

36 Derivative actions

Are derivative actions available?

Derivative actions are provided in the Corporation Act, Law No.86 of 2005. A shareholder who owns a stock for six months or more can file a lawsuit against the directors of the company to claim damages caused by them to the company. The company may intervene in the litigation to assist one of the parties or as a co-litigant if the lawsuit is filed.

37 Fast-track proceedings

Are fast-track proceedings available?

No general fast-track proceedings are available. However, for monetary claims of¥600,000 or less, the parties may use special proceedings, called "actions on small claims". In this type of action, cases must generally be concluded at the first oral proceeding, and the judge hands down a judgment immediately after the conclusion of the hearing. The defendant may object to the expedited proceedings, and request that the court move to ordinary civil proceedings.

38 Foreign-language proceedings

Is it possible to conduct proceedings in a foreign language?

No, only the Japanese language can be used at court proceedings. Japanese translations or interpretation must be arranged, if documentary evidence is written, or witness testimonies are given, in foreign languages.

Effects of judgement and enforcement

39 Effects of a judgment

What legal effects does a judgment have?

The parties to the case, ie, the plaintiff and the defendant, are generally the parties who are bound by the judgment. However, there are situations where the law expands the effect of the judgment to a third party to ascertain the legal relationship. The typical example is a judgment regarding corporations, such as a judgment to confirm the invalidity of shareholders meetings. Further, if a third party who has an interest in the result of the litigation between other parties has been given notice of the litigation, that third party may be bound by the litigation between others, even if the third party does not join the proceedings as an intervenor. Only the conclusion of the judgment has a res judicata effect, and its reasoning does not. Exceptions exist for the res judicata effect given to claims relating to a set-off, though the judgment regarding the set-off is only related to the reasoning. The res judicata effect is given to the legal relationship that existed as of the closing of the oral proceedings of the instance that tries the facts, ie, the first or second instance.

In addition to a res judicata effect, an enforceability is attached to a judgment ordering performance, and constitutive effect is attached to a constitutive judgment.

40 Enforcement procedure

What are the procedures and options for enforcing a domestic judgment?

Enforcement procedures differ depending on the type of a judgment and the assets to be seized. For immovable property and movable property, the execution court administers proceedings, and the court will dispose of the assets, with the assistance of a bailiff, at an auction. For receivables, the execution court can issue an order the effect of which is to transfer the receivables from the original creditor, the respondent, to the petitioner.

41 Enforcement of foreign judgments

Under what circumstances will a foreign judgment be enforced in your jurisdiction?

In order for a foreign judgment to be enforced in Japan, an execution judgment from a competent court must be obtained. The petitioner must establish that the judgment is final. In addition, the judgment must satisfy the following requirements: (i) the international jurisdiction of the court which rendered the judgment exists in accordance with the international jurisdiction rules of Japan; (ii) the losing party has received service of summons or orders required to commence the proceedings (except for service through notice by publication), or has responded in the lawsuit even if he has not received such service; (iii) the substance of the judgment and the proceedings of the lawsuit are not contrary to the public order or morals of Japan; and (iv) reciprocity exists. The court issuing an execution judgment must not retry the whole case (révision au fond) regardless of whether or not the foreign judicial decision was erroneous.

Costs

42 Costs

Will the successful party's costs be borne by the opponent?

The Japanese system does not follow the UK-style "costs follow the event" rule, which allows the prevailing party to seek recovery of his costs, including attorney's fees, from the losing party. The prevailing party is entitled to recover only limited expenses from the losing party, including court filing fees, daily allowances, lodging and travel expenses paid to witnesses, and remuneration paid to experts, provided by the Law on Costs of Civil Procedure, Law No. 40 of 1971 (the LCCP). Courts hand down an award regarding the cost allocation together with their judgment on the merits. Attorney's fees must be borne by each party, except for very limited daily allowance and expenses paid to the counsel for appearance for the hearing, as provided by the LCCP.

43 Legal aid

May a party apply for legal aid to finance court proceedings? What other options are available for parties who may not be able to afford litigation?

The Japan Legal Support Center provides legal aid to finance court proceedings for those who cannot afford legal costs. Legal aid is available, if (i) the recipient's revenue is below a prescribed standard, (ii) it is impossible to consider that there is no prospect that the party will prevail in the case, and (ii) assistance is appropriate under the spirit of legal aid. The system is to loan money to the litigant without charging interest, with a duty to repay it. Further, certain insurance companies pay the costs of lawyers for specific categories of disputes. Whether the insurance may cover costs other than lawyers' costs and opponents' costs depends on the terms and conditions of the insurance.

44 Contingency fees

Are contingency fee arrangements permissible? Are they commonly used?

Lawyers in Japan typically charge clients in litigation matters by receiving a retainer fee at the start of their engagement with their clients and a success fee at the successful outcome of the case. Pure contingency fee arrangements are also permissible. Both the retainer fee and the success fee are typically calculated based on the amount of the claim. See question 46 below for the fee scale that previously existed. Charging clients on an hourly rate basis is also used, especially among law firms that perform international work.

45 Third-party funding

Is third-party funding allowed in your jurisdiction?

Third-party funding is not yet common in Japanese litigation practice, and no developed discussion exists in Japan regarding the permissibility of third-party funding. If a third party who funds the costs of a claim is not an attorney or a legal professional corporation, and its activities also include acting as an intermediary between attorneys and clients (ie referring cases to attorneys to obtain compensation for his business activities), that third party may be subject to criminal punishment.

46 Fee scales

Are there fee scales lawyers must follow? Are there upper or lower limits for fees charged by lawyers in your jurisdiction?

There used to be fee scales which lawyers referred to in discussing fees with clients until 2004. It was not a mandatory fee scale even before 2004, but it was officially abolished due to concerns about impermissible cartel activity by lawyers under the Japanese antimonopoly law. However, lawyers frequently refer to the abolished scale even now, to discuss fee arrangements with potential clients. No upper or lower limits for fees exist, but overly large remuneration will be deemed unethical and will be subject to discipline by the Bar.

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Akihiro Hironaka

Akihiro Hironaka has been a partner in the dispute resolution group of Nishimura & Asahi, the largest law firm in Japan, since 2007.

Mr Hironaka is renowned for his successful representation in large-scale and complex disputes. For example, he succeeded in defending a Japanese corporation in six large extraordinary parallel lawsuits with total damages claims amounting to Y48.3 billion, where claimants included an affiliate company of a US headquartered investment bank and a US hedge fund. Mr Hironaka has also achieved impressive results in product liability lawsuits, cross-border disputes concerning M&A transactions, reinsurance claims, construction disputes, and termination of distribution agreements.

Mr Hironaka is a graduate of the University of Tokyo (LLB, 1993) and Harvard Law School (LLM, 2003), and is admitted to the bars of Japan and New York. He served as a judge of the Yokohama District Court in 1998–2000, and worked as a foreign attorney at Arnold & Porter, Washington, DC, in 2003–2004.

Mr. Hironaka has authored numerous books and articles, including Yasuhei Taniguchi et al., eds, Civil Procedure in Japan (contributor), International Arbitration and Corporate Strategy (co-author) and Exploring Practicality: Using Japanese Courtrooms for Evidence Gathering in International Arbitration, Dispute Resolution International Vol. 9, No. 2.

He is an individually ranked lawyer in the category of dispute resolution/litigation with Chambers Global/Asia-Pacific 2016 and Who's Who Legal Japan 2015. Who's Who Legal Japan 2015 described him as an "experienced litigator who 'is one of the first names that come to mind for high-stake lawsuits'".

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